

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ANTHONY BROWN, #K04318,

Plaintiff,

vs.

STATE OF ILLINOIS,

Defendant.

Case No. 19-cv-01401-SMY

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiff Anthony Brown, formerly an inmate of the Illinois Department of Corrections,¹ brings this action pursuant to 42 U.S.C. § 1983 for alleged deprivations of his constitutional rights. Plaintiff asserts an Eighth Amendment claim related to medical care and seeks monetary damages. (Doc. 1).

This case is now before the Court for preliminary review of the Complaint under 28 U.S.C. § 1915A, which requires the Court to screen prisoner Complaints to filter out nonmeritorious claims. 28 U.S.C. § 1915A(a). Any portion of the Complaint that is legally frivolous, malicious, fails to state a claim for relief, or requests money damages from an immune defendant must be dismissed. 28 U.S.C. § 1915A(b).

Plaintiff has not named a suable entity for his § 1983 claim; he names only the State of Illinois as a defendant, which is not a “person” subject to suit for money damages under § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 66-71 (1989); *Thomas v. Illinois*, 697 F.3d 612, 613 (7th Cir. 2012). Therefore, the State of Illinois will be dismissed with prejudice and the

¹ Plaintiff was released after filing this action. (Doc. 8).

Complaint will be dismissed for failure to state a claim for relief.

Because Plaintiff will be given the opportunity to amend his Complaint, the Court will also address his motion for recruitment of counsel. (Doc. 3). Civil litigants do not have a constitutional or statutory right to counsel. *Pruitt v. Mote*, 503 F.3d 647, 649 (7th Cir. 2007). However, under 28 U.S.C. § 1915(e)(1), the Court has discretion to recruit counsel to represent indigent litigants in appropriate cases. *Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006). *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (citing *Pruitt*, 503 F.3d at 655). Plaintiff states that he has written to two law firms in an attempt to retain counsel but has not received a response. While responses to Plaintiff's requests are pending, the recruitment of counsel is premature. Plaintiff may renew his request for counsel after first attempting to locate counsel on his own. If Plaintiff does renew his request, he should give the Court rejection letters from at least three attorneys to prove that he has made reasonable efforts to obtain counsel on his own. After consideration of the *Pruitt*² factors, the Motion for Recruitment of Counsel (Doc. 3) will be denied.

Accordingly, **IT IS HEREBY ORDERED** that the Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted. The State of Illinois is dismissed with prejudice and the Clerk of Court is **DIRECTED** to **TERMINATE** it as a party.

Plaintiff is **GRANTED** leave to file a First Amended Complaint on or before **June 5, 2020**. If Plaintiff chooses to file a First Amended Complaint, he should identify each defendant in the case caption and set forth sufficient allegations against each defendant to describe what the

² See *Pruitt v. Mote*, 503 F.3d 647, 649 (7th Cir. 2007) (when deciding whether to recruit counsel for an indigent litigant, the Court must consider (1) whether the indigent plaintiff has made reasonable attempts to secure counsel on his own, and, if so, (2) whether the difficulty of the case exceeds the plaintiff's capacity as a layperson to coherently present it).

defendant did or failed to do to violate his constitutional rights. *See DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990) (a successful complaint generally alleges “the who, what, when, where, and how”). The First Amended Complaint should comply with Federal Rule of Civil Procedure 8 and *Twombly* pleading standards.³

If Plaintiff fails to file his First Amended Complaint within the allotted time or consistent with the instructions set forth in this Order, the entire case shall be dismissed with prejudice for failure to comply with a court order and/or for failure to prosecute his claims. FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994); 28 U.S.C. § 1915(e)(2). The dismissal shall count as one of Plaintiff’s three allotted “strikes” under 28 U.S.C. § 1915(g). An amended complaint supersedes and replaces the original complaint, rendering the original complaint void. *See Flannery v. Recording Indus. Ass’n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004). The Court will not accept piecemeal amendments to the original Complaint. Thus, the First Amended Complaint must stand on its own, without reference to any previous pleading, and Plaintiff must re-file any relevant exhibits he wishes the Court to consider. The First Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915A.

If Plaintiff decides to file a First Amended Complaint, it is strongly recommended that he use the civil rights complaint form designed for use in this District. He should label the form, “First Amended Complaint,” and he should use the case number for this action (No. 19-cv-01401-SMY). To enable Plaintiff to comply with this Order, the **CLERK** is **DIRECTED** to mail Plaintiff a blank civil rights complaint form.

³ Under Rule 8, a Complaint must include a short, plain statement of the case against each individual. Further, Plaintiff must plead “enough facts to state a claim that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Plaintiff is further **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee remains due and payable, regardless of whether Plaintiff elects to file a First Amended Complaint. See 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

IT IS FURTHER ORDERED that Plaintiff's Motion for Recruitment of Counsel (Doc. 3) is **DENIED** without prejudice.

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than 7 days after a transfer or other change in address occurs. Failure to comply with this Order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. See FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: April 6, 2020

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge